



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Baywest Management Corporation (Agent)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD and FF

### Introduction

This application was brought by the landlord on May 31, 2013 seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served on May 22, 2013. The landlord also sought a monetary award for unpaid rent and parking, recovery of the filing fee for this proceeding and authorization to retain the tenants' security and pet damage deposits in set off against the balance owed.

### Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession and monetary award as requested.

### Background and Evidence

This tenancy began on February 4, 2012. Rent was increased to \$875 from \$850 per month on June 1, 2013, plus \$30 parking, and the landlord holds security and pet damage deposits of \$425 each paid at the beginning of the tenancy.

During the hearing, the property manager gave evidence that her company had taken over management of the rental building on May 1, 2013.

She stated that the Notice to End Tenancy of May 22, 2013 had been served after the tenants had a rent/parking shortfall of \$480 which had been due on May 1, 2013. In addition, the tenants had an accumulated rent shortfall for the full rent for March and April of 2012 and for April of 2013.

When question on the delay in commencing an action on the 2012 rents, the building manager, who had also worked under the previous management company, stated that such delays were consistent with his experience with the previous company.

The tenant stated that he could provide no evidence to prove that he had paid the rents claimed as unpaid by the landlord. He concurred that, after having paid the rent for June 2013, he owed the landlord \$2,680 as claimed. I have varied that amount by \$15 to bring a \$40 claim for an NSF fee into line with the \$25 limit set by Regulation 7(1)(d) and by adding \$50 to permit the landlord to recover the filing fee for this proceeding, make a new total of \$2,715.

The tenant stated that he is able and willing to bring his account up to date and will do so by June 21, 2013 at the latest.

The property manager stated that if he did so, she would reinstate the tenancy. However, in the event the tenant is unable to pay the outstanding balance as promised, she requested an Order of Possession and a Monetary Order.

### Analysis

Section 26 of the *Act* provides that tenants must pay rent when it is due.

Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 46(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was June 1, 2013.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenants.

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I further find that the landlord is entitled to a Monetary Order for \$2,715 as agreed to by the tenant.

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

The landlord's copy of this decision is also accompanied by a Monetary Order for **\$2,715.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 20, 2013

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Residential Tenancy Branch